

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FIDELITY AND GUARANTY
INSURANCE COMPANY,

Plaintiff,

v.

STAR EQUIPMENT CORPORATION,
CHARLENE B. FORAN, JOHN J. FORAN,
and TOWN OF SEEKONK,

Defendants.

CIVIL ACTION NO. 1:04-CV-10250-EFH

JOINT MOTION TO SUBMIT CASE TO MEDIATION

The plaintiff, Fidelity and Guaranty Insurance Company (“F&G”), and the defendants, Star Equipment Corporation (“Star”), Charlene B. Foran, John J. Foran, and the Town of Seekonk (“Seekonk”), hereby jointly move this Court to grant its joint request to submit this case to mediation. In support of this motion, the parties jointly state:

1. This action arises from a construction dispute involving a general contractor, Star, and the Owner of the construction project, Seekonk, in connection with a project known as

“Installation of Replacement Watermains and Appurtenant Work, Contract No. 2003-W1,” in Seekonk, Massachusetts (“the Project”).

2. On or about June 28, 2002, Star and the Indemnitors executed a General Agreement of Indemnity (“GAI”) for the purpose of indemnifying F&G in connection with surety bonds issued by F&G on behalf of Star for certain construction projects.

3. On June 24, 2002, Star entered into a contract with Seekonk to act as the general contractor to the Project.

4. As a direct and proximate result of the Indemnitors executing the GAI, and in reliance thereon, F&G, as surety, executed a performance bond ("the Bond") at the request and on behalf of Star, as principal, for the benefit of the Seekonk, as obligee, for the Project.

5. By letter dated September 11, 2003, Seekonk gave notice to F&G that Star was in default of its contractual obligations and demanded that F&G perform its obligations under the Bond.

6. Star responded to Seekonk and to F&G, denying that Star was in default of its contractual obligations.

7. On or about February 5, 2004, F&G commenced this declaratory judgment action due to a controversy between Star and Seekonk as to whether these parties had mutually agreed to settle their dispute and, correspondingly, whether F&G has any liability on the Bond as a result.

8. The parties have agreed to submit this matter to mediation in an effort to reach an amicable and mutually agreeable resolution to the claim.

9. The Court has set a trial date for February 6, 2006.

10. The parties respectfully request that the Court refer this case to mediation and continue the trial date to a date after the mediation.

11. All parties have joined in this motion.

WHEREFORE, the parties respectfully request that the Court refer this case to mediation and continue the trial date to a date after the mediation, to allow them an opportunity to bring this case to a close through mediation.

Respectfully submitted,

FIDELITY AND GUARANTY INSURANCE COMPANY,

By its attorneys,

/s/ Eric H. Loeffler

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**STAR EQUIPMENT CORPORATION, CHARLENE B.
FORAN, JOHN J. FORAN,**

By their attorney,

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TOWN OF SEEKONK,

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Dated: January 13, 2006